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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,935	12/12/2001	Raymond Gerard St. Louis	KCC-16,727	2923
35844	7590	11/12/2004		
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			EXAMINER REICHLE, KARIN M	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

05

Office Action Summary	Application No. 10/015,935	Applicant(s) LOUIS ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 38-54 is/are pending in the application.
- 4a) Of the above claim(s) 3-5, 7, 40 and 46-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 8-13, 38, 39 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/24/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-30-04 has been entered.

Claim Language Interpretation

2. For purposes of the prior art rejections, referring to the instant specification by page and line: The claim language "elastic" is defined as set forth at page 8, lines 10-12. "Garment", "personal care garment" and "protective garment" are defined as set forth on page 16, lines 2-9. "In the vicinity of the garment openings", "aligned with the garment opening or edge" and "abutting a garment opening or edge" are defined as set forth at page 16, lines 10-20. "Targeted elastic regions", "targeted elastic zones", "targeted elastic material", "targeted elastic laminate" are defined as set forth at page 9, lines 4 et seq, i.e. the elastic regions are made in the same process as is the elastic material or laminate made therefrom, i.e. separate manufacture of an elastic band and subsequent connection thereof to the underlying material to form the elastic material or laminate is not included. See however the discussion of product by process infra. See also page 2, last paragraph, page 4, lines 7-11, page 26, lines 19-22 and page 53, lines 8-14. "Low or lower tension zone", "High or higher tension zone" and "spacer zone" are defined as set

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forth on page 10, line 19- page 11, line 3, page 11, lines 7-12 and 19-20. It is noted that the terminology “absorbent composite structure”, and “side panels is permanently bonded to and extends beyond...an outermost layer of the composite structure” have not been specifically defined by the Applicants, i.e. on pages 8-16, and thus will be given their broadest customary interpretation, i.e. the dictionary definition, in light of the specification. As set forth on page 18, lines 3-9 and page 22, lines 9-12 of the specification and now the claims, the absorbent composite is the cover, liner and absorbent, the side panels may be separate pieces attached to the composite or integrally formed therewith, i.e. an extension of a component of the composite structure. Therefore, in light of the specification, claims and the dictionary definition of “composite”, i.e. “made up of distinct components; compound”, the terminology “absorbent composite” is defined as the absorbent, liner and cover where coextensive and the “linear side edge of an outermost layer of the absorbent composite structure” being where the outermost layer is no longer coextensive with the other components of the composite structure. The terminology “attached” and “permanently bonded” are defined as being direct or indirect permanent bonding or attaching of separate elements to form a unitary structure or direct or indirect permanent bonding or attaching so as to form a monolithic structure. See also the response to Arguments section infra.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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4. Claims 1-2, 6, 8-13, 38-39, and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Litchholt et al '919 in view of Van Gompel '052.

Claims 1-2, 6 and 38-39: See Litchholt at Figures, the paragraph bridging cols. 3-4, col. 15, line 57-col. 17, line 3, col. 19, lines 59-col. 20, line 61, col. 21, lines 21-23 and 50-55, col. 31, lines 37-43, col. 32, lines 5-8, col. 33, lines 22-24 and 29-30, col. 35, line 54-col. 36, line 24, col. 6, lines 35-39, and thus also Figures of '753 and col. 34, lines 47-63 of '092 incorporated thereby. e.g. see paragraph bridging cols. 31-32, i.e. the Litchholt reference teaches a diaper, training pant, feminine hygiene article or absorbent undergarment having a chassis including an absorbent composite structure of an absorbent assembly between a liner and a cover and front side panels and back side panels permanently bonded to and extending transversely beyond an associated linear side edge of an outermost layer of the absorbent composite structure, the chassis defines leg openings and a waist opening, there is elastic material in at least each of the front or back side panels which may comprise a plurality of narrow strands or filaments of different compositions, and the side panels can have differential extensibility along the longitudinal axis, i.e. from the waist edge to the leg edge. The elastic material is manufactured in-line or continuously with its carrier, e.g. the garment. Therefore, the Litchholt device includes all the claimed structure except for differential extensibility being explicitly disclosed as having high tension zones aligned along the waist and leg openings, one or two low tension zone(s) and a spacer zone between the at least one high tension zone aligned along the waist end edge and each waist end edge. However, see Van Gompel '052 at Figures, abstract, col. 1, lines 3-5, 19-20, 27-30, 34-49, 55 et seq, col. 2, lines 10-14 and 42-43, col. 4, lines 14-16, 18-22, 33-39, col. 5, line 43- col. 6, line 51, col. 6, line 56-col. 7, line 54, col. 8, lines 18-25, col. 8, line 51-col. 9,

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line 24 (and thereby col. 3, line 66-col. 4, line 11, col. 4, line 31-col. 5, line 37, col. 8, lines 7-39, col. 9, lines 27-52 of '464), and claims, i.e. the chassis is 2, the absorbent composite is 32, 52, and 34 where coextensive, also see Figures 6-7 which show such composite having linear side edges, the side panels which are at least portions 10 of element 20 are attached and permanently bonded to the composite and extend transversely beyond the side edges of the composite, the leg openings are 16, the waist opening is 12, the targeted elastic material are the stretchable portions of 10 and the tension zones are disclosed at col. 7, lines 16-31 and col. 5, line 43-col. 7, line 15. For example, if the gradient is increases from the waist to the leg a highest zone is adjacent the leg, a second highest zone is adjacent the highest zone and aligned with the waist opening and a third highest zone is adjacent the second and so on and thereby, there is a high zone aligned with each leg opening, e.g. the first, a high tension zone aligned with the waist opening, e.g. the second, a low zone, e.g. the third zone, and a spacer zone or a spacer zone and a second low tension zone, e.g. the fourth zone or fourth and fifth zones or the zones adjacent the waist. It is noted that the claims do not require the high zones to be equal and only require a low zone to be lower than a high zone. The claims do not set forth how the zones, other than the spacer zone and the high zone aligned with the waist, are positioned with regard to the other zones. For a second example, if the zones are created by bands, e.g., see Figures 2 and 5, the areas between 14, 18 and 44 have no or lower elasticity or stretchability than those areas with such bands. Therefore, the '052 reference teaches the claimed zones. Furthermore Van Gompel '052 discloses that such a differential extensibilities in a side section of a disposable garment are interchangeable with each other and other gradients such as increasing or decreasing from either the waist or leg opening, respectively. Therefore, to make the differential extensibility of

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Litchholt the claimed differential extensibility which includes the recited tension zones as taught by Van Gompel instead, if not already, would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of substitution no needed to render such substitution obvious), i.e. the equivalents are the longitudinal stretch gradients which are interchangeable for their desired function of providing a nonuniform or differential extensibility, or would be obvious to one of ordinary skill in the art in view of the interchangeability of various differential extensibility patterns as taught by Van Gompel. While it is the Examiner's position that Litchholt expressly discloses a targeted elastic material as defined by Applicant it is noted that the language "targeted elastic laminate" as defined defines a product by process, see MPEP 2113, (i.e. even though product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process). It is further noted that the end product claimed is a garment not a targeted elastic material, i.e. if a garment of the prior art is the same as the end product in the claims, the claims are unpatentable even though it was not made in a single manufacturing process but rather through separate manufacture and subsequent connection. Therefore, even if Litchholt would teach a separately manufactured elastic band, since the end product of the prior art discussed supra is the same as the end product claimed, the claims are unpatentable.

With regard to claims 8-9, and 41-43, see Litchholt at the portions cited supra and col. 33, lines 57-61, '052 at col. 9, lines 18-24 and col. 1, lines 27-30 (and thereby the dimensions set

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forth at col. 3, line 66-col. 4, line 11 of '464), and '092 at col. 34, lines 47-53 and col. 43, lines 36-40, and the prior art combination in the previous paragraph, i.e. the length ranges as claimed are taught by the prior art. With regard to claims 10, 12, and 44-45, see col. 36, lines 8-23 of '919, i.e. elastomeric materials having various inherent properties, e.g. basis weight is an inherent property. With regard to claim 11, see portions of '919 cited supra and thereby '753 at col. 3, line 50-col. 4, line 55, i.e. the layers of the panels can all be the same and the panels can be impervious, i.e. all the layers are liquid impervious. In regard to claim 13, see, e.g., side panels in Figures of '753 which is incorporated by '919 and col. 33, lines 57-58 of '919.

Response to Arguments

5. The terminal disclaimer filed 5-4-04 has been approved. Applicant's remarks with to the prior art have been considered but are deemed moot in that the specific rejections discussed have not been reraised.

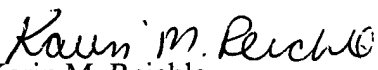
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
November 9, 2004